

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to tax credit rate and total school tuition organization tax credits and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 42, “Adjustments to Computed Tax and Tax Credits,” and Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2641; 2018 Iowa Acts, Senate File 2417; 2019 Iowa Acts, House File 779; and 2021 Iowa Acts, House File 847.

Purpose and Summary

This proposed rule making is primarily intended to implement statutory changes to the tax credit rate and the total school tuition organization tax credits that may be authorized each calendar year. 2021 Iowa Acts, House File 847, increases the tax credit rate to 75 percent from 65 percent for tax years beginning on or after January 1, 2021, and increases the amount of the credit available to taxpayers in 2022 and subsequent years. These proposed amendments also implement the provision in 2020 Iowa Acts, House File 2641, which eliminated the cap on the percentage of total tax credits that could be approved each year for a corporation. Previously, not more than 25 percent of the total annual tax credits could be allocated to corporate taxpayers.

This proposed rule making also updates the rules to reflect recent legislative changes to the 2020 and 2021 tax credit caps and certain administrative terms, including the definition of “eligible student.” Finally, this proposed rule making clarifies that a taxpayer must take the credit in the tax year in which the contribution is made.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond that of the legislation it is intended to implement. The final fiscal note for 2021 Iowa Acts, House File 847, division VIII, estimated that the school tuition tax credit changes enacted in that legislation would decrease General Fund revenues for fiscal years 2022 through 2025 by \$3.4 million, \$3.4 million, \$2.2 million, and \$0.6 million, respectively.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 31, 2021. Comments should be directed to:

Michael Mertens
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.587.0458
Email: michael.mertens@iowa.gov

Public Hearing

If requested, a public hearing will be held as follows:

August 31, 2021
10 to 11 a.m.

Via video/conference call

Persons who wish to participate in the video/conference call should contact Michael Mertens before 4:30 p.m. on August 30, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 701—42.32(422) as follows:

701—42.32(422) School tuition organization tax credit. ~~Effective for the tax year beginning on or after January 1, 2006, but beginning before January 1, 2007, a school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash contributions made by a taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2007, the~~ For tax years beginning prior to January 1, 2021, a school tuition organization tax credit is available which is equal to 65 percent of the amount of voluntary cash or noncash contributions made by a taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2021, the tax credit is equal to 75 percent of the amount of voluntary cash or noncash contributions made by a taxpayer to a school tuition organization. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a noncash contribution, and these are equally applicable to the determination of the amount of a school tuition organization tax credit ~~for tax years beginning on or after January 1, 2007.~~

42.32(1) Definitions. The following definitions are applicable to this rule:

“*Certified enrollment*” means the enrollment at schools served by school tuition organizations as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, of the appropriate year.

“*Contribution*” means a voluntary cash or noncash contribution to a school tuition organization that is not used for the direct benefit of any dependent of the taxpayer or any other student designated by the taxpayer.

“*Eligible student*” means a student residing in Iowa who is a member of a household whose total annual income during the calendar year prior to the school year in which the student receives a tuition grant from a school tuition organization does not exceed an amount equal to ~~three~~ four times the most recently published federal poverty guidelines in the Federal Register by the United States Department of Health and Human Services.

“*Qualified school*” means a nonpublic elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11, including a prekindergarten program for students who are five years of age by September 15 of the appropriate year, and adheres to the provisions of the federal Civil Rights Act of 1964 and Iowa Code chapter 216, and which is represented by only one school tuition organization.

“*School tuition organization*” means a charitable organization in Iowa that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code and that does all of the following:

1. to 5. No change.

“*Tuition grant*” means a grant to a student to cover all or part of the student’s tuition at a qualified school.

42.32(2) No change.

42.32(3) *Participation forms.* Each qualified school that is served by a school tuition organization must annually submit a participation form to the department by November 1. The following information must be provided with this participation form:

a. The certified enrollment of the qualified school as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday.

b. The name of the school tuition organization that represents the qualified school.

~~For the tax year beginning in the 2006 calendar year only, each qualified school served by a school tuition organization must submit to the department a participation form postmarked on or before August 1, 2006, which provides the certified enrollment as of the third Friday of September 2005, along with the name of the school tuition organization that represents the qualified school.~~

42.32(4) *Authorization to issue tax credit certificates.*

a. By December 1 of each year, the department will authorize school tuition organizations to issue tax credit certificates for the following tax calendar year. ~~For the tax year beginning in the 2006 calendar year only, the department, by September 1, 2006, will authorize school tuition organizations to issue tax credit certificates for the 2006 calendar year only.~~ The total amount of tax credit certificates that may be authorized is:

- (1) \$2.5 million for the 2006 calendar year,
- (2) \$5 million for the 2007 calendar year,
- (3) \$7.5 million for the 2008 through 2011 calendar years,
- (4) \$8.75 million for the 2012 and 2013 calendar years, ~~and~~
- (5) \$12 million for the 2014 and subsequent calendar years. ~~through 2018 calendar years,~~
- (6) \$13 million for the 2019 calendar year,
- (7) \$15 million for the 2020 and 2021 calendar years, and
- (8) \$20 million for the 2022 calendar year and subsequent calendar years.

b. The amount of authorized tax credit certificates for each school tuition organization is determined by dividing the total amount of tax credit available by the total certified enrollment of all qualified participating schools. This result, which is the per-student tax credit, is then multiplied by the certified enrollment of each school tuition organization to determine the tax credit authorized to each school tuition organization.

EXAMPLE: For determining the authorized tax credits for the ~~2008~~ 2022 calendar year, if the certified enrollment of ~~each~~ all qualified ~~school~~ schools in Iowa, as provided to the department by November

1, ~~2007~~ 2021, was ~~37,500~~ 40,000, the per-student tax credit would be ~~\$200~~ \$500 (~~\$7.5~~ \$20 million divided by ~~37,500~~ \div 40,000). If a school tuition organization located in Scott County represents four qualified schools with a certified enrollment of 1,400 students, the school tuition organization would be authorized to issue ~~\$280,000~~ \$700,000 (~~\$200 times~~ $\$500 \times 1,400$) of tax credit certificates for the ~~2008~~ 2022 calendar year. The department would notify this school tuition organization by December 1, ~~2007~~ 2021, of the authorization to issue ~~\$280,000~~ \$700,000 of tax credit certificates for the ~~2008~~ 2022 calendar year. This authorization would allow the school tuition organization to solicit contributions totaling ~~\$430,769~~ \$933,333 (~~\$280,000 divided by 65%~~ $\$700,000 \div 75\%$) during the ~~2008~~ 2022 calendar year which would be eligible for the tax credit.

42.32(5) Issuance of tax credit certificates.

a. The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate, ~~which will be~~ designed by the department, ~~will~~ shall contain the name, address and tax identification number of the taxpayer; the amount and date that the contribution was made; the amount of the credit; the tax year that the credit may be applied; the school tuition organization to which the contribution was made; and the tax credit certificate number.

b. ~~For tax years beginning on or after July 1, 2009, a tax credit certificate may be issued to corporation income taxpayers. For tax years beginning on or after January 1, 2013, a~~ A tax credit certificate may be issued to a partnership, limited liability company, S corporation, estate or trust. The amount of credit claimed by an individual shall be based on the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate or trust.

42.32(6) Claiming the tax credit. The taxpayer must include the tax credit certificate with the tax return for which the credit is claimed. The tax credit shall be claimed in the tax year during which the contribution is made. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

a. The taxpayer ~~may~~ shall not claim an itemized deduction for charitable contributions for Iowa income tax purposes for the amount of the contribution made to the school tuition organization.

b. Married taxpayers who file separate returns or file separately on a combined return must allocate the school tuition organization tax credit to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa, including those who are claiming a tax credit of a partnership, limited liability company, S corporation, estate, or trust of which they are a member, must determine the school tuition organization tax credit in the ratio of their Iowa source net income to their total source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or to file separately on a combined return, the school tuition organization tax credit must be allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income.

42.32(7) Reporting requirements. Each school tuition organization that issues tax credit certificates must report to the department, postmarked by January 12 of each ~~tax~~ calendar year, the following information:

a. No change.

b. The total number and dollar value of contributions received by the school tuition organization for the previous ~~tax~~ calendar year.

c. The total number and dollar value of tax credit certificates issued by the school tuition organization for the previous ~~tax~~ calendar year.

d. A list of each taxpayer who received a tax credit certificate for the previous ~~tax~~ calendar year, including the amount of the contribution and the amount of tax credit issued to each taxpayer for the previous ~~tax~~ calendar year. This list should also include the tax identification number of the taxpayer and the tax credit certificate number for each certificate.

e. to g. No change.

This rule is intended to implement Iowa Code section 422.11S as ~~amended by 2013 Iowa Acts, House File 625.~~

ITEM 2. Amend rule 701—52.38(422) as follows:

701—52.38(422) School tuition organization tax credit. ~~Effective for tax years beginning on or after July 1, 2009,~~ For tax years beginning prior to January 1, 2021, a school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash or noncash contribution made by a corporation taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2021, the tax credit is equal to 75 percent of the amount of the voluntary cash or noncash contribution made by a corporation taxpayer to a school tuition organization. ~~For tax years beginning on or after January 1, 2013, the credit is available for S corporations, partnerships, limited liability companies, estates and trusts where the income is taxed directly to the individual shareholders, partners, members or beneficiaries, an individual may claim the credit.~~ The amount of credit claimed by an individual shall be based on the pro rata share of the individual's earnings of the S corporation, partnership, limited liability company, estate or trust. For information on the initial registration, participation forms and reporting requirements for school tuition organizations, see rule 701—42.32(422).

52.38(1) Amount of tax credit authorized—additional limitation for corporations.

a. Of the \$7.5 million of school tuition organization tax credits authorized for the 2009 through 2011 calendar years, no more than 25 percent, or \$1,875,000, can be authorized for corporation income tax taxpayers.

b. Of the \$8.75 million of school tuition organization tax credits authorized for 2012 and 2013, no more than 25 percent, or \$2,187,500, can be authorized for corporation income tax taxpayers.

c. Of the \$12 million of school tuition organization tax credits authorized for 2014 ~~and subsequent calendar years through 2018~~, no more than 25 percent, or \$3 million, can be authorized for corporation income tax taxpayers.

d. Of the \$13 million of school tuition organization tax credits authorized for 2019, no more than 25 percent, or \$3,250,000, can be authorized for corporation income tax taxpayers.

e. Effective July 1, 2020, the prohibition against authorizing more than 25 percent of the total authorized tax credits for corporation income tax purposes was repealed. On or after July 1, 2020, of the total school tuition organization tax credits authorized for a year, any amount can be authorized for corporation income taxpayers.

52.38(2) Issuance of tax credit certificates. The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate ~~will~~ shall contain the name, address and tax identification number of the taxpayer; the amount and date that the contribution was made; the amount of the credit; the tax year that the credit may be applied; the school tuition organization to which the contribution was made; and the tax credit certificate number.

52.38(3) Claiming the tax credit. The taxpayer must include the tax credit certificate with the tax return for which the credit is claimed. The tax credit shall be claimed in the tax year during which the contribution is made. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The taxpayer ~~may~~ shall not claim a deduction for charitable contributions for Iowa corporation income tax purposes for the amount of the contribution made to the school tuition organization.

This rule is intended to implement Iowa Code section 422.33.